IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 661 OF 2007

Shree Balwant Co-operative
Housing Society Ltd. .... Petitioner

versus

The State of Maharashtra and others.... Respondent.

Shri Uday P. Warunjikar for the petitioner
Shri S.K.Chincholikar AGP for respondents 1 and 2.
Shri N.N.Bhadrashet for respondents 10 & 12.

CORAM; A.P. DESHPANDE, J.
DATED; 4TH JULY, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. This petition is filed by the petiitoner which is a Co-operative Housing Society. The members of the petitioner society made complaints with the Deputy Registrar against the outgoing managing committee members of the society. Hence Dy. Registrar directed an enqiry to be made under section 83 of the Maharashtra Co-operative Societies Act by the special auditor Class-I. The said order was passed on 18-12-2004. Pursuant to the said order the Enquiry Officer has submitted his report on 25-10-2005. The enquiry officer has held that the appellants are

responsible for various irregularities. Being aggreived by the said report the respondent nos.4 to 12 filed a revision before the Divisional Joint Registrar, Co-operative Societies, Mumbai Division. The Revisional authority by its order dated 7-11-2006 allowed the revision solely on the ground that the enquiry officer did not conduct the enquiry in adherence to the preciples of natural justice. So observing the Revisional authority set aside the report. However left it to the discretion of the respondent no.2 herein, the Deputy Registrar, to reconsider the case on its merit ifso required. It is this order which is challenged by filing the present writ petition by the society. The society has submitted that on the basis of the complaints made, the Deputy Registrar had already examined the matter and directed holding of enquiry under section 83. As the enquiry report has been held to be in breach of principles of natural justice and without considering the submission of the appellant, the same has been set aside. It is submitted that if the reason for setting aside the enquiry report is failure to hold the same in consonance of principles of natural justice, then the revisional authority should have directed holding of an enquiry afresh. The Rivisional authority has held in paragraph 8 thus:

> The enquiry officer has not given proper opportunity and has not considered the submisison of the appellant and therefore has clearly in violation of principles of natural justice and therefore on this count alone the enquiry report is required to be set aside.

It is as such clear that the sole ground for setting aside the enquiry report was that the same was not conducted in adherence to priciples of natural justice. If this be the reason, then it would be in fitness of things to hold an enquiry denovo. To the extent the order passed by the Rivisional authority, gives an option to the Deputy Registrar either to direct a denovo enquiry or otherwise deserves to be quashed as unsustainable. In the result the writ petition is partly allowed. The direction no.2 contained in the operative part of the order is quashed and set aside. Instead the Deputy Registrar co-operative societies, Respondent no.2. is directed to cause a denovo enquiry under section 83 by himself or through an officer appointed. Rule made abolute in the above terms. All contentions are left open to be urged by the parties before appropriate forum.

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